

# **EXHIBIT "H"**

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
3           DAD'S PRODUCTS COMPANY,       )  
4           INC.,                                )  
5                               Plaintiff,        )  
6    ) CIVIL ACTION  
7           VS.                                )  
8    ) NO.: 03-350-ERIE  
9           SERGEANT'S PET PRODUCTS,        )  
10           INC.,                               )  
11    )  
12                               Defendant.     )

13  
14                   -----  
15                               ORAL DEPOSITION OF  
16                               ROBERT SCHARF  
17                               August 16, 2005  
18                               Volume 1  
19                   -----

20                   ORAL DEPOSITION OF ROBERT SCHARF, produced  
21           as a witness at the instance of the Plaintiff, and duly  
22           sworn, was taken in the above-styled and numbered cause  
23           on the 16th of August, 2005, from 9:09 a.m. to 10:08  
24           a.m., before Michelle L. Varner, CSR in and for the  
25           State of Texas, reported by machine shorthand, at the  
         offices of Sergeant's Pet Products, 1601 Elm Street,  
         Suite 300, in the City of Dallas, County of Dallas, and  
         State of Texas, pursuant to the Federal Rules of Civil  
         Procedure and the provisions stated on the record or  
         attached hereto.

1 A P P E A R A N C E S

2

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6 FOR THE PLAINTIFF

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15 FOR THE DEFENDANT

16

17

18 ALSO PRESENT:

19 Alan Brown

20

21

22

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1 I N D E X

2

3 WITNESS: Robert Scharf

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9 E X H I B I T S

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1 P R O C E E D I N G S

2 ROBERT SCHARF,

3 having been first duly sworn, testified as follows:

4 EXAMINATION

5 BY MR. DEVLIN:

6 Q. Good morning, Mr. Scharf. My name's Neal  
7 Devlin. We met a few moments ago. And I represent  
8 Dad's Products Company in this case. This is a  
9 deposition pursuant to Federal Rules of Civil  
10 Procedure 30(b)(6).

11 MR. DEVLIN: And I'm going to ask  
12 you to mark that as Exhibit 1.

13 (Exhibit No. 1 marked.)

14 Q. (By Mr. Devlin) I'm going to show you  
15 what's been marked as Plaintiff's Exhibit 1. That is  
16 a Notice of Deposition that was served out in this  
17 case. Actually, I think this one is unsigned because  
18 I grabbed the unsigned one out of my file. But have  
19 you reviewed this?

20 A. I've seen it, yes.

21 Q. Okay. And are you the designee for all of  
22 the topics identified in this notice?

23 A. Yes.

24 Q. Okay. I would also point out for the record  
25 that the caption on this notice is incorrect. Sowell

1 and Company should no longer be in the caption. So I  
2 apologize for that.

3 All right. Mr. Scharf, can I just  
4 get you to state and spell your name for the record?

5 A. Robert, R-o-b-e-r-t, Scharf, S-c-h-a-r-f.

6 Q. Okay. And who are you currently employed  
7 by?

8 A. Sergeant's Pet Care Products.

9 Q. Okay. And what is your position with  
10 Sergeant's?

11 A. President.

12 Q. Okay. How long have you been president of  
13 Sergeant's?

14 A. Five years.

15 Q. Okay. With respect to Sergeant's, it's an  
16 incorporated entity, correct?

17 A. Uh-huh.

18 Q. And where is it incorporated, in what state?

19 A. Nevada.

20 Q. Okay. Who are its current corporate  
21 officers?

22 A. Corporate officers would be myself, Alan  
23 Brown, and, I believe, Joe Connealy is also an  
24 officer.

25 Q. Okay. Just in broad terms, what is

1 Sergeant's general business?

2 A. We are a manufacturer and distributor of pet  
3 supplies.

4 Q. Okay. And in which states do you have a  
5 presence -- does Sergeant's have a presence?

6 A. Pretty much all of them. I mean, once we  
7 sell to a distributor, you can't be certain, but we  
8 would say all of them.

9 Q. Okay. Is Sergeant's a publicly traded  
10 company?

11 A. No.

12 Q. Okay. Who is its current majority  
13 shareholder?

14 A. Jim Sowell.

15 Q. Okay. At what point in time did Mr. Sowell  
16 become the majority shareholder of Sergeant's?

17 A. At the time it was purchased from ConAgra.  
18 I believe that was in 2000.

19 Q. Okay. And it was previously owned by  
20 ConAgra; is that right?

21 A. Uh-huh.

22 Q. Okay. I'm going to show you --

23 MR. DEVLIN: If I can mark that as  
24 Exhibit 2.

25 (Exhibit No. 2 marked.)

1 Q. (By Mr. Devlin) This is a document that I  
2 believe was produced in discovery, although it doesn't  
3 have a Bates stamped number on it, but I think it was.  
4 This purports to be a listing of the directors and  
5 officers of Sergeant's Pet Care Products, but it's  
6 undated. I guess my question is, presently are the  
7 directors identified on this document correct?

8 A. Yes, I believe so.

9 Q. Okay. And we just went over the officers --  
10 and I certainly wasn't trying to trick you at all --  
11 but is Keith Martin currently an officer now?

12 A. I'm uncertain. I believe he may be. I  
13 believe that Joe Connealy is also. I don't believe  
14 that it was a substitution.

15 Q. Okay. Back in 2001, in particularly,  
16 between September of 2001 and May of 2002, were the  
17 directors of Sergeant's the same as indicated on  
18 Exhibit 2, if you know?

19 A. I was not a director at that time.

20 Q. Okay. Is that the only change between the  
21 two? Would Mr. Sowell, Martin, Brown and Shea have  
22 been directors at that time?

23 A. To be honest, I'm not sure if Jim Shea had  
24 been added to the board at that time or not.

25 Q. And with respect to officers for that same



1 time period, September of '01 through May of '02,  
2 would the officers have been --

3 A. Probably would be these three.

4 Q. These three. Probably not Mr. Connealy?

5 A. No.

6 Q. Okay.

7 MR. DEVLIN: I'm going to ask you to  
8 mark this as Exhibit 3, please.

9 (Exhibit No. 3 marked.)

10 Q. (By Mr. Devlin) What's just been marked as  
11 Exhibit 3 purports to be directors, officers and  
12 shareholders of Pet Care Foods as of June 28, 2002. I  
13 guess my question is, back in -- and if you know  
14 this -- back between September of '01 and May of '02,  
15 with respect to Pet Life, would these people have been  
16 the directors and officers of Pet Life at that time?

17 A. I'm sorry, I have no idea.

18 Q. You don't know. Do you know anything about  
19 who would have been the directors of Pet Life at that  
20 time?

21 A. No.

22 Q. Okay. Were you a director or officer of Pet  
23 Life at that time?

24 A. No.

25 Q. Okay. Going back to September 1 of 2001,

1 did Sergeant's purchase trademarks from Pet Life?

2 A. Yes.

3 Q. Okay.

4 MR. DEVLIN: Could you mark this as  
5 Exhibit 4?

6 (Exhibit No. 4 marked.)

7 Q. (By Mr. Devlin) I'm going to show you  
8 what's been marked as Deposition Exhibit Number 4.  
9 This purports to be a Trademark, License and  
10 Transfer Agreement. Have you seen that agreement  
11 before?

12 A. Oh, yes.

13 Q. Okay. And if you'll look to what is page  
14 seven on that, is that your signature for Sergeant's  
15 Pet Care Products?

16 A. Yes.

17 Q. Okay. In the agreement, it certainly speaks  
18 for itself -- but just to make questioning a little  
19 bit easier, is it your understanding that through this  
20 agreement, Sergeant's was purchasing certain  
21 trademarks from Pet Life?

22 A. Yes.

23 Q. Okay. And did you understand how Pet Life  
24 had acquired those trademarks?

25 A. No, not really.

1 Q. Okay. Were you aware that Pet Life had  
2 purchased those trademarks from Gains Pet Foods Corp.  
3 at a time previous to this?

4 A. At that time, no.

5 Q. You were not?

6 A. No.

7 Q. Okay. What was your understanding as to  
8 what Sergeant's was paying to Pet Life in  
9 consideration for getting the trademarks that was  
10 transferred pursuant to this agreement?

11 A. We were paying \$600,000. And then, there  
12 was some brokers that, it was my understanding, that  
13 Pet Life had used, that they were no longer using,  
14 that we needed to compensate. There was some kind of  
15 a royalty agreement.

16 Q. Okay.

17 A. So we absorbed some liabilities that they  
18 had had.

19 Q. Okay. So the consideration consisted of two  
20 parts, a payment of \$600,000; is that right?

21 A. Uh-huh.

22 Q. And then also the assumption of these  
23 certain obligations that you've just talked about.

24 A. Uh-huh.

25 Q. Okay. The \$600,000, was that paid in a lump

1 sum?

2 A. I believe so, yes.

3 Q. Okay. Now, with respect to the assumption  
4 of royalty obligations, if you look at paragraph one,  
5 subparagraph B, and I'm just going to read this into  
6 the record, maybe to make things easier.

7 "In addition to the payment of  
8 \$600,000, Sergeant's hereby agrees to assume and pay  
9 any and all additional payments due to Gains Pet Foods  
10 Corp. pursuant to the Supplier and Royalty Agreement  
11 dated November 23, 1999, in an amount of up to  
12 \$270,000." The paragraph goes on from there, but I'm  
13 going to stop reading at that point.

14 Were you familiar with the agreement  
15 referenced in paragraph 1(B), specifically the  
16 Supplier and Royalty Agreement dated November 23,  
17 1999?

18 A. No, I've never reviewed that document.

19 Q. Okay. So prior to signing this agreement,  
20 you didn't look at what the royalty obligations  
21 referred to in that? You didn't review that  
22 agreement?

23 A. No. We just knew that we had an obligation  
24 of up to \$320,000.

25 Q. Okay. Did you know whether that obligation

1 was joint of several with anybody else?

2 A. No.

3 Q. Okay. Did you understand that your  
4 obligation would be -- strike that.

5 You did understand the obligation  
6 you were assuming was the obligation referenced in the  
7 November 23rd, 1999 agreement, though?

8 A. Oh, yes.

9 Q. Okay. At any time did Sergeant's notify  
10 Gains Pet Foods Corporation of the transfer of these  
11 trademarks pursuant to the agreement that's marked  
12 Exhibit 4?

13 A. No.

14 Q. Okay. Did Sergeant's notify Dad's Pet Food  
15 of this -- of the transfer of the trademarks?

16 A. No.

17 Q. Okay. At any time did Sergeant's notify  
18 Gains or Dad's of its assumption of the royalty  
19 obligations referred to in paragraph 1(B) of the  
20 agreement?

21 A. No.

22 Q. Okay. Are you aware if Pet Life notified  
23 either of those entities of either of those transfers?

24 A. I don't have any idea.

25 Q. Okay. The next document I want to go over,

1       unfortunately, I didn't make copies of. And I  
2       apologize for that.

3                       MR. DEVLIN: Let me show it to you  
4       first, Dave, if that's all right. I don't know.

5                       MR. WHITE: Okay.

6       Q.       (By Mr. Devlin) This document is entitled  
7       Trademark and License Mortgage. Are you familiar with  
8       this?

9                       MR. WHITE: Do you want to mark that  
10      as an exhibit?

11                      MR. DEVLIN: I think I will, yes.

12      A.       Yes.

13      Q.       Okay.

14                      MR. DEVLIN: Can you mark that as  
15      the next sequential exhibit?

16                      (Exhibit No. 5 marked.)

17      Q.       (By Mr. Devlin) And what's your  
18      understanding of what this agreement -- well, prior to  
19      that question. The date of this agreement is  
20      September 1, 2001, correct?

21      A.       Yes.

22      Q.       Okay. And that is the same date as the  
23      Trademark, License and Transfer Agreement that's  
24      Exhibit 4; is that correct?

25      A.       Yes.

1 Q. Okay. What's your understanding of what the  
2 Trademark and License Mortgage did with respect to the  
3 trademarks at issue?

4 A. It was my understanding that the bank,  
5 LaSalle Business, had a mortgage on the entire  
6 business and that this document basically broke a  
7 portion of that liability out and tied it to the  
8 trademarks.

9 Q. Okay. So it was your understanding that  
10 pursuant to this agreement, LaSalle would have a  
11 security interest or a mortgage interest in the  
12 trademarks you were purchasing from Pet Life; is that  
13 correct?

14 A. That's correct.

15 Q. Okay. Thank you.

16 MR. DEVLIN: When we take a break,  
17 if we can get copies of this, Dave.

18 MR. WHITE: Sure.

19 Q. (By Mr. Devlin) Going back to Exhibit 4,  
20 did you also understand, pursuant to this agreement,  
21 that you were granting a license to Pet Life to use  
22 certain of the trademarks that you were purchasing?

23 A. For a period of time until we could get our  
24 own, yes.

25 Q. Okay. Also, was there any obligation or

1 reference to Sergeant's utilizing Pet Life to actually  
2 produce product that would be sold under those  
3 products, if you know?

4 A. Yes.

5 Q. Okay. Subsequent to the transfer of the  
6 trademarks on September 1 of 2001, did Sergeant's use  
7 the trademarks it purchased from Pet Life?

8 A. Yes.

9 Q. Okay. How did Sergeant's use those?

10 A. To market products.

11 Q. Okay. Did it -- at any time did Sergeant's  
12 utilize anything known as Mapleleaf Pet Care as part  
13 of its use of these trademarks?

14 A. I'm not aware of it.

15 Q. Okay. Were you at any time aware of the  
16 existence of Mapleleaf Pet Care?

17 A. No.

18 Q. Okay.

19 MR. DEVLIN: Could you mark that as  
20 the next exhibit, please?

21 (Exhibit No. 6 marked.)

22 Q. (By Mr. Devlin) I'm going to show you  
23 what's been marked as Plaintiff's Exhibit 6. It's  
24 entitled, Settlement Agreement. Have you ever seen  
25 that agreement before?



1           A.     It does not ring a bell.  No, I don't  
2     believe so.

3           Q.     Okay.  Are you aware if at any time any  
4     Sergeant's representative had any dealings with Dad's  
5     Pet Products -- Dad's Products Company with respect to  
6     Mapleleaf Pet Care?

7           A.     Not that I'm aware of.

8           Q.     Okay.  After purchasing the trademarks from  
9     Pet Life, did Sergeant's experience any increase or  
10    decrease in its revenues?

11          A.     In the revenue of these products?

12          Q.     Well, let me ask a back-up question.  Was  
13     Sergeant's previously producing the products that it  
14     would utilize the trademarks to produce under  
15     different trade names?

16          A.     No.

17          Q.     Okay.  So after purchasing the trademarks  
18     and selling product under those trademarks, did that  
19     -- are you aware if that increased or decreased or had  
20     no effect on Sergeant's revenues?

21          A.     Revenues would have gone up.

22          Q.     Okay.  Are you aware if it had any effect,  
23     positive or negative, on Sergeant's profits?

24          A.     Profits would have gone down in the short  
25     term.

1 Q. Okay. How about in the long term?

2 A. We've invested a great deal in it. At this  
3 point, it's difficult to break that out separate.

4 Q. Okay. Did Sergeant's continue to own all of  
5 the trademarks that were transferred pursuant to the  
6 September 1, 2001 agreement with Pet Life?

7 A. I can't say all. We were going to have a  
8 preponderance of them.

9 Q. Okay.

10 A. I believe so.

11 Q. Okay. Do you know if you sold any of them?

12 A. Not that I'm aware of. I think some of them  
13 were abandoned.

14 Q. Some were abandoned, okay. Subsequent to  
15 the September 1st, 2001 transfer of trademarks with  
16 Pet Life, did Sergeant's make any royalty payments  
17 that it assumed as part of that agreement?

18 A. Yes.

19 Q. Okay. To whom did Sergeant's make those  
20 payments?

21 A. At one point, I think we made a payment to  
22 Dad's. And then I think we made a payment or some  
23 payments directly to the brokers in question.

24 Q. Okay. With respect to the payment to Dad's,  
25 you believe you made one payment to Dad's subsequent

1 to September 2001?

2 A. I think that's correct.

3 Q. Do you know the amount of that payment?

4 A. I did. It's -- I don't know, \$40,000 or  
5 something like that.

6 Q. Okay.

7 A. I could look that up.

8 Q. Okay. Ballpark is fine right now. If it  
9 becomes necessary, I maybe will ask you to do that in  
10 a minute.

11 How is it that you made the payment  
12 to Dad's?

13 A. We were instructed that that's where the  
14 money should go.

15 Q. Okay. Who instructed you of that?

16 A. Steven Smathers.

17 Q. Okay. And who is Steven Smathers?

18 A. He was our counsel.

19 Q. Okay. Did he tell you why you were supposed  
20 to make the payment to Dad's?

21 A. Pursuant to the agreement.

22 MR. WHITE: I'm just going to  
23 object.

24 MR. DEVLIN: I didn't hear the  
25 answer, so if you want to object, go ahead.

1 MR. WHITE: That's fine. I just  
2 wanted to caution the witness not to go into anything  
3 that perhaps is attorney/client privileged. I don't  
4 think it is, if he's just telling you to make the  
5 payment to Dad's pursuant to the agreement. I think  
6 that's okay. But just be careful not to tread on  
7 that.

8 THE WITNESS: Okay.

9 Q. (By Mr. Devlin) And I'm not trying to get  
10 any information from you that's protected. I'm just  
11 trying to figure out what reason it is that you made  
12 the payment to Dad's. And if it's simply that  
13 Mr. Smathers told you to, that -- that's fair enough.  
14 Is that correct?

15 A. Uh-huh.

16 Q. Okay. How is it that you knew to make a  
17 \$40,000 payment to Dad's?

18 A. Again, that would have come from Steven.

19 Q. Okay. Other than Mr. Smathers telling you  
20 to whom to make the payment and the amount, you didn't  
21 have conversation with anybody else or any other  
22 reason to make the payment in that way or in that  
23 amount?

24 A. No.

25 MR. WHITE: Just to be clear. I

1 think you had no other reason. I think the answer  
2 would be yes to be clear on the record.

3 MR. DEVLIN: Okay.

4 MR. WHITE: Sometimes we get these  
5 double meanings coming out of these things.

6 MR. DEVLIN: It was a poor question.

7 Q. (By Mr. Devlin) Did you have an  
8 understanding as to what Dad's was going to do with  
9 the \$40,000 payment that you were making to it?

10 A. Other than that there was a royalty due to  
11 this group, I assumed it would be handled.

12 Q. Okay. When you say "this group," looking at  
13 paragraph 1(B), there are a couple of entities  
14 referenced, the first being Gains Pet Foods  
15 Corporation and after that it references the November  
16 23rd, 1999 agreement. And then below that it  
17 references White Cap, Inc., Gerald Schulman and David  
18 Kofsky. And that references a separate agreement, a  
19 Sales and Marketing Agreement dated November 16, 1999.  
20 Did you have an understanding as to whether Dad's was  
21 going to be making payments to one or both of these  
22 entities with that \$40,000 payment?

23 A. I can only speculate. I mean, we were told  
24 that this is where we were to make the payment.

25 Q. Okay. So when you made the payment -- and

1 correct me if this is wrong -- but when you made the  
2 payment, did you understand that it was simply a  
3 satisfaction or it was pursuant to your total  
4 obligations under paragraph 1(B)?

5 A. I believe that it was separate payments  
6 made, in looking through the documents. So I don't  
7 know. It probably would have only been for one.

8 Q. Okay. Do you know which one?

9 A. I assume by the size, it had to have been  
10 the first one.

11 Q. Okay. You indicated previously that in  
12 addition to the one payment to Dad's that we just  
13 discussed, there may have been other payments directly  
14 to brokers; is that right?

15 A. Yeah.

16 Q. Okay. And when you say "brokers" are you  
17 referring to White Cap, Gerald Schulman and David  
18 Kofsky?

19 A. Yeah. I believe they were the brokers in  
20 question.

21 Q. Okay. And you believed that Sergeant's may  
22 have made payments directly to those individuals and  
23 that entity?

24 A. Yes.

25 Q. Okay. How many payments were made directly

1 to the brokers?

2 THE WITNESS: I don't have it off  
3 the top of my head. Can I review it?

4 MR. WHITE: You may.

5 A. Let's see. There was six made to one  
6 address and one made to another.

7 MR. DEVLIN: Can we go off the  
8 record for a second?

9 (Brief discussion off the record.)

10 Q. (By Mr. Devlin) Prior to going off the  
11 record, we were discussing payments Sergeant's made to  
12 brokers. And you were reviewing a collection of  
13 documents that I'd like to mark as an exhibit now.

14 A. Okay.

15 (Exhibit No. 7 marked.)

16 Q. (By Mr. Devlin) These have now been marked  
17 as Exhibit 7. And they're five documents there. Can  
18 you tell me what those are?

19 A. Those are print-outs out of our accounts  
20 payable system.

21 Q. Okay. And this might just be the easiest  
22 way to go through this.

23 A. Okay.

24 Q. Can you just go through and indicate to me,  
25 on the first page of Exhibit 7, who it indicates the

1 payment was made to?

2 A. Chateau Holdings.

3 Q. Okay. And do you understand -- and what was  
4 the amount of the payment made to Chateau?

5 A. \$44,821.60.

6 Q. Okay. And do you know why Sergeant's made a  
7 payment in that amount to Chateau Holdings?

8 A. It indicates miscellaneous accruals. But I  
9 believe it was in connection with the royalty.

10 Q. Okay. And do you know with respect to -- if  
11 it was connection to the royalty, whether it was a  
12 payment that was intended to go to Gains Pet Foods  
13 Corp.?

14 A. I don't know the final destination. It  
15 indicates Chateau Holdings.

16 Q. Okay. So, just so I understand, you believe  
17 that payment was made as part of Sergeant's  
18 obligations pursuant to paragraph 1(B) of this  
19 agreement?

20 A. Right.

21 Q. Do you believe it was made as part of its  
22 obligations to Gains Pet Foods or as part of its  
23 obligations to the three brokers listed, White Cap,  
24 Schulman and Kofsky?

25 A. I don't know that it was our obligation to



1 any of those individuals. It was the obligation that  
2 we got in this agreement. So as far as we were  
3 concerned, it was an obligation to Pet Life.

4 Q. Okay. But you understood that you were  
5 assuming an obligation to make payments due to the  
6 various entities and individuals listed in that  
7 paragraph 1(B), correct?

8 A. It was my understanding that we had an  
9 obligation to Pet Life and that Pet Life was giving us  
10 the direction on where this money should go.

11 Q. Okay. So you received direction from Pet  
12 Life?

13 A. Actually, I received direction from counsel.

14 Q. Okay. And you don't know where counsel  
15 received direction as to whom to make the payments to?

16 A. No.

17 Q. Okay. So the first payment you referenced  
18 was to Chateau Holdings in the amount of \$44,821.61?

19 A. Correct.

20 Q. Okay. I believe --

21 A. I think this is just the second page of the  
22 same payment.

23 Q. Okay.

24 A. I'm not sure why there's two. I think it  
25 was just a print screen.

1 Q. Okay. In looking at the third page.

2 A. This one is for White Cap, Inc. And there's  
3 six of these payments.

4 Q. Okay. And this would be part of the record,  
5 so you don't need to read in the amount of those  
6 payments.

7 A. Okay.

8 Q. And again, do you understand that those  
9 payments were made pursuant to your obligations under  
10 paragraph 1(B)?

11 A. To Pet Life, yes.

12 Q. Okay. Then the fourth page of Exhibit 7,  
13 does that indicate a payment?

14 A. Yeah. The fourth and fifth are a payment to  
15 Dad's.

16 Q. Okay. And what was the amount of that  
17 payment?

18 A. \$39,515.24.

19 Q. And just so that the record is clear, is  
20 that the payment that we discussed previously when you  
21 said there was one payment to Dad's?

22 A. Uh-huh.

23 Q. Okay.

24 MR. DEVLIN: Would you mark this as  
25 the next exhibit, please?

1 (Exhibit No. 8 marked.)

2 Q. (By Mr. Devlin) We've marked as Plaintiff's  
3 Exhibit 8, this is entitled Notification and  
4 Cancellation Agreement.

5 A. Uh-huh.

6 Q. Have you ever seen that agreement before?

7 A. Yes.

8 Q. Okay. And what's your understanding as to  
9 what this agreement did?

10 A. It was an agreement whereby Sergeant's would  
11 wire transfer to the bank, basically, cash in return  
12 for clearing us from other obligations.

13 Q. Okay. What other obligations?

14 A. Most notably, the royalty -- or the  
15 obligations noted in 1(B) of the Trademark and  
16 Transfer Agreement.

17 Q. Okay. Prior to the Notification and  
18 Cancellation Agreement that's Exhibit 8, had  
19 Sergeant's ordered product from Pet Life?

20 A. Yes.

21 Q. Okay. And at the time of the Notification  
22 and Cancellation Agreement, were there outstanding  
23 invoices that Pet Life claimed were due to it?

24 A. Yes.

25 Q. Okay. And was the amount of those

1 outstanding invoices, the \$353,707.38, referenced in  
2 that agreement?

3 A. Yes, that's correct.

4 Q. Okay. And did Sergeant's dispute whether it  
5 owed that money to Pet Life?

6 A. Yes.

7 Q. Okay. And then, pursuant to this agreement  
8 -- and this, I guess, is a partial rephrasing of what  
9 you just said, so correct me if I'm wrong. But  
10 Sergeant's was to pay that amount directly to LaSalle  
11 Bank; is that correct?

12 A. That's correct.

13 Q. Okay. And in exchange for that, you  
14 understood that Sergeant's would be relieved of its  
15 obligations under paragraph 1(B) of the Trademark,  
16 License and Transfer Agreement?

17 A. That's correct.

18 Q. Okay. And did Sergeant's, in fact, make  
19 that payment to LaSalle Business Credit?

20 A. Yes.

21 Q. Are you aware, did Sergeant's ever receive  
22 any portion of that payment back as a refund for any  
23 defective product?

24 A. I'm not aware.

25 Q. Okay.

1 MR. DEVLIN: Would you mark this as  
2 Exhibit 9?

3 (Exhibit No. 9 marked.)

4 Q. (By Mr. Devlin) I'm going to show you  
5 another agreement which is entitled, Settlement and  
6 Cooperation Agreement. Have you ever seen this  
7 document before?

8 A. Yes.

9 Q. If you turn to the third page of this  
10 document, under paragraph two, the last sentence of  
11 that paragraph. And you can certainly read,  
12 obviously, as much of it as you'd like. But my  
13 question is going to be with respect to the last  
14 sentence.

15 A. Yes, I'm familiar with that.

16 Q. Did you understand that if any product that  
17 Sergeant's would receive from Pet Life that's  
18 referenced in paragraph two were to be found  
19 defective, Sergeant's would receive a refund?

20 A. Yes, I'm very aware of that.

21 Q. Okay. And that would have been a refund of  
22 the \$353,000 -- \$353,707.38 referenced in the  
23 Notification and Cancellation Agreement?

24 A. That is correct.

25 Q. Okay. And I know I've asked this already.

1 But, to your knowledge, did you receive any such  
2 refund pursuant to paragraph two?

3 A. No. There was -- no.

4 Q. Okay. Pursuant -- looking at Exhibit 8  
5 again, the Notification and Cancellation Agreement.  
6 Did you also understand that pursuant to that  
7 agreement, Sergeant's was revoking the license that it  
8 had granted to Pet Life to use the trademarks at  
9 issue?

10 A. Yes, I'm aware of that.

11 Q. Okay. Did Sergeant's notify Gains of the  
12 Notification and Cancellation Agreement at any time?

13 A. No.

14 Q. Okay. Did Sergeant's notify Dad's of the  
15 Notification and Cancellation Agreement at any time?

16 A. No.

17 Q. Okay. Are you aware if Pet Life notified  
18 either of those entities?

19 A. No, I'm not aware.

20 Q. You're not aware, okay.

21 Looking at Exhibit 9, again and  
22 also --

23 MR. DEVLIN: Would you mark this as  
24 Exhibit 10?

25 (Exhibit No. 10 marked.)

1 Q. (By Mr. Devlin) -- and what we've just  
2 marked as Exhibit 10. And Exhibit 10 is entitled  
3 Foreclosure Agreement. I believe it's dated May 3,  
4 2003. Have you ever seen that Foreclosure Agreement  
5 before?

6 A. No.

7 Q. Okay. And just so the record is clear,  
8 Sergeant's is not listed in that agreement and you  
9 certainly did not sign that agreement. I was just  
10 wondering if you'd ever seen that before?

11 A. No.

12 Q. Okay.

13 MR. DEVLIN: This is the last one.  
14 Can you mark that as 11?

15 (Exhibit No. 11 marked.)

16 Q. (By Mr. Devlin) Looking at Exhibit --  
17 what's just been marked as Exhibit 11, which is an  
18 Amended and Restated Supply Agreement. Have you ever  
19 seen that agreement before?

20 A. Yes.

21 Q. Okay. And what is your understanding as to  
22 the purpose of that agreement?

23 A. It was an agreement whereby we were to get  
24 supplies of formulated treats from a company called  
25 World Pet.

1 Q. Okay. The Amended and Restated Supply  
2 Agreement is dated -- it indicates it was made as of  
3 May 3rd, 2002; is that correct?

4 A. Yes.

5 Q. Okay. And looking back at Exhibit 9, the  
6 date on that agreement is also May 3rd of 2002; is  
7 that correct?

8 A. That's correct.

9 Q. Okay. The Amended and Restated Supply  
10 Agreement, you indicated that it was to receive  
11 certain product from World Pet. It was an agreement  
12 that Sergeant's would receive certain product from  
13 World Pet; is that correct?

14 A. That's correct.

15 Q. Okay. And the product is identified in that  
16 agreement; is that also correct?

17 A. Yes.

18 Q. Okay. Are you aware if the product that was  
19 going to be provided or produced by World Pet for  
20 Sergeant's was to be sold under any of the trademarks  
21 that Sergeant's acquired from Pet Life?

22 A. Yes.

23 Q. Okay. Prior to the Amended and Restated  
24 Supply Agreement, from whom had Sergeant's purchased  
25 that product from?



1           A.     Pet Life.

2           Q.     Okay. Did you understand that World Pet had  
3     purchased the assets of Pet Life when you entered into  
4     the Amended and Restated Supply Agreement?

5           A.     Yes.

6           Q.     Okay. Were you aware that at around the  
7     time of the Notification and Cancellation Agreement,  
8     which I believe is Exhibit 8, the Settlement and  
9     Cooperation Exhibit, which is Exhibit 9, and the  
10    Amended and Restated Supply Agreement, which is  
11    Exhibit 11, Pet Life was going through -- a cumbersome  
12    question -- substantial assets of Pet Life were being  
13    sold to World Pet, in that Pet Life was ceasing  
14    operations?

15          A.     Yes.

16          Q.     Okay.

17                   MR. DEVLIN: If we could take a  
18    two-minute break. Let me look through some things.  
19    I'm pretty much done, I think I may have a couple more  
20    questions.

21                   MR. WHITE: Sure.

22                   (Break taken from 9:48 a.m. to.

23                   10:01 a.m.)

24                   (Exhibits No. 12 and 13 marked.)

25          Q.     (By Mr. Devlin) I just have a couple more

1 questions.

2 A. Okay.

3 Q. I'm going to show you what we've marked as  
4 Exhibit 12. This purports to be a May 3rd, 2002  
5 Settlement and Cooperation Agreement. Are you  
6 familiar with this agreement?

7 A. Yes.

8 Q. Okay. What's your understanding of the  
9 purpose of this agreement?

10 A. Well, again, it was to quantify that we were  
11 going to make a payment and that it did not -- we were  
12 not making any -- any issues or positives or negatives  
13 for our debt that they owed us, and that -- let's see  
14 -- and that the -- any other issues would go away.

15 Q. Okay. Did you understand that pursuant to  
16 this agreement, Sergeant's would also cooperate with  
17 LaSalle in any actions it was going to take with  
18 respect to foreclosure of Pet Life? I'm specifically  
19 looking at paragraph one, subsentences G and H, if you  
20 want to look at those.

21 A. Okay. Yes, I'm familiar with that.

22 Q. Okay. And just to be clear, actually, to  
23 make sure you read what I'm going to be asking about,  
24 also subsentence F. I don't know if you read that,  
25 too, or not.

1 A. Okay.

2 Q. Okay. Do you know if Sergeant's took any  
3 actions to assist LaSalle in the sale, foreclosure or  
4 other disposition of the assets of Pet Life?

5 A. We took some product we didn't want.

6 Q. Okay. Anything else?

7 A. Not that I can remember.

8 Q. Okay. This has been marked Exhibit 13.  
9 This is a -- I'm now out of agreements. This is a  
10 1999 Supplier and Royalty Agreement. You do not  
11 appear to have signed this agreement and Sergeant's is  
12 not a party to this agreement. I believe I asked you  
13 this already without showing it to you, but have you  
14 ever seen this agreement before?

15 A. No.

16 Q. Okay. If you look at the first page of the  
17 agreement. It's indicated that it was made as of  
18 November 23rd, 1999. Do you understand this to be the  
19 agreement that's referenced in paragraph 1(B) of the  
20 Trademark, License and Transfer Agreement?

21 A. It appears to be, yeah.

22 Q. Okay. You've indicated that you've never  
23 seen this Supply and Royalty Agreement. But did you  
24 understand -- was it your understanding that pursuant  
25 to the Trademark, License and Transfer Agreement,

1 which is Exhibit 4, Sergeant's was assuming  
2 obligations that Pet Life had pursuant to this  
3 November 23rd, 1999 agreement?

4 A. Yes.

5 Q. Okay. So did you have any understanding or  
6 did you believe there was any restriction as to  
7 Sergeant's assumption of those obligations, other than  
8 the cap on the amount Sergeant's would have to pay?

9 A. No.

10 Q. Okay. Do you have any knowledge as to why  
11 Pet Life wanted to sell the trademarks to Sergeant's?

12 A. I would just be speculating.

13 Q. Okay. During the negotiations with -- let  
14 me ask this question. Were you personally involved in  
15 the negotiations for the purchase of the trademarks  
16 from Pet Life?

17 A. Through counsel, yes.

18 Q. Okay. Were you aware if Pet Life ever  
19 indicated why it wanted to sell the trademarks?

20 A. No, I'm not aware of that.

21 Q. Okay. How did Sergeant's come to know that  
22 Pet Life had these trademarks?

23 A. Again, through counsel we were made aware of  
24 an opportunity to make the acquisition.

25 Q. Okay. Are you aware if Mr. Sowell or any

1 related entity had an interest in Pet Life at the time  
2 Sergeant's purchased the trademarks?

3 A. I knew that Alan Brown was involved in that  
4 in some way, shape, or form, but not any specifics.

5 Q. Okay.

6 A. We'd only been a part of the organization a  
7 very short period of time.

8 Q. Okay. Were you part of Sergeant's prior to  
9 its purchase by Mr. Sowell?

10 A. Yes.

11 Q. Okay.

12 MR. DEVLIN: Okay. That's all of  
13 the questions I have.

14 MR. WHITE: We'll read.

15 (Off the record at 10:08 a.m.)

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# **EXHIBIT "I"**

TAP007: AP Voucher Inquiry

Voucher # 100359 Batch # 164 Hold Code

Vendor Information

Vendor ID 0140630 Pay Alt Payee # Financial Inst 0001  
Name SHATO HOLDINGS  
Address c/o Dad's Pet Foods  
City MEADVILLE State PA  
Zip Code 16335 Country USA

Exit  
LookUp  
<< >>  
Distribute  
Vendor  
History  
Alt Payee  
Receipt  
Detail

Exit  
<< >>  
LookUp  
Key  
Voucher  
Inquiry  
Check  
Inquiry  
Print Rcpt  
Invoice

Invoice Information

Invoice Date 12/31/01 Invoice Amt 44821.60  
Terms NO NET 0 Disc Amt  
Terms Due 01/01/02 Freight Amt  
Manual Due 01/25/02 Sales Tax  
Invoice # DEC 2001 Curr Code DL  
Reference Curr Rate 1.0000000  
Auto Dist Sep Check? N  
Note ROYALTY 4TH QTR

Voucher Information

Original Date 01/24/02  
Fiscal Period 4 2002  
Vch Source AP  
Status Paid

TAP007A: Voucher Distribution Inquiry

Voucher # 100359 Vch Source AP Status P  
Fiscal Period & Currency  
Eff Date  
Fiscal Pd  
Curr Code DL  
Exch Rate 1.0000000  
Voucher Amounts  
Invoice 44821.60  
Discount  
Freight  
Distributed 44821.60

EXHIBIT 7  
Deposited  
Date 8/10/05  
Rpt. mly  
WWW.DEPBOOK.COM

Seq	Type	Account Number	Amount	Description
1	MISC	90550245002149990	44821.60	AP-MISC ACCRUALS
2				
3				
4				

[illegible]



TAP007: AP Voucher Inquiry

Voucher # 97423 Batch # 105 Hold Code

Vendor Information

Vendor ID 1011534 Pay Alt Payee # Financial Inst 0001  
 Name DADS 1099?  
 Address 18746 MILL STREET Receipt Detail? N  
 City MEADVILLE State PA  
 Zip Code 16335 Country USA

Invoice Information

Invoice Date 10/29/01 Invoice Amt 39515.24  
 Terms NO NET Q Disc Amt  
 Terms Due 10/30/01 Freight Amt  
 Manual Due 10/29/01 Sales Tax  
 Invoice # ROYALTY Curr Code DL  
 Reference Curr Rate 1.0000000  
 Auto Dist Sep Check? N  
 Note

Voucher Information

Original Date 10/29/01  
 Fiscal Period 1 2002  
 Vch Source AP  
 Status Paid

TAP007A: Voucher Distribution Inquiry

Voucher # 97423 Vch Source AP Status P

Fiscal Period & Currency

Eff Date  
 Fiscal Pd  
 Curr Code DL  
 Exch Rate 1.0000000

Voucher Amounts

Invoice 39515.24  
 Discount  
 Freight  
 Distributed 39515.24

Seq Type Account Number

Seq	Type	Account Number	Amount	Description
1	MISC	900551133850403800	39515.24	ROYALTY EXPENSE
2				
3				
4				

Exit  
 LookUp  
 << >>  
 Distribute  
 Vendor  
 History  
 Alt Payee  
 Receipt  
 Detail

Exit  
 << >>  
 LookUp  
 Key  
 Voucher  
 Inquiry  
 Check  
 Inquiry  
 Print Rcpt  
 Invoice

Paid 39515.24  
 Rcpt Inv?  
 N  
 Voucher  
 Inquiry  
 Check  
 Inquiry  
 Print Rcpt  
 Invoice

Exit  
 << >>  
 Detail



# **EXHIBIT "J"**



April 29, 2002

Mr. Sultan Thiara  
Shato Holdings, Ltd.  
Suite 200  
4088 Cambie Street  
Vancouver, B.C. Canada V5Z 2X8

Dear Mr. Thiara:

Enclosed you will find Dad's share of the 1<sup>st</sup> quarter 2002 royalty payment, the allocation of the royalty between Dad's and Sergeant's (formerly Pet Life) and the back up documentation for deductions against the royalty.

I contacted Sergeant Pet Care last week to request their payment be sent to me so that I could send the total payment with the related documentation. I also contacted them today and still have not received the payment.

We want to make our payment in a timely manner and I will give you the contact information for the responsible person at Sergeant's.

The contact person is:  
Bob Scharf  
14748 West Center Road, Ste 303  
Omaha, NE 68144

I can be contacted at (814) 724-7710 extension 4545 if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Edward C. Shields".

Edward C. Shields, CPA  
Controller

Cc: Rick Moyer